

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

PERRY SPANN,

Plaintiff,

v.

No. 1:21-cv-00709-MIS-SCY

THE NEW MEXICO BOARD  
OF BAR EXAMINERS,  
SOPHIE MARTIN, and  
NATIONAL CONFERENCE  
OF BAR EXAMINERS,

Defendants.

**OMNIBUS ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION, DENYING PLAINTIFF’S MOTION TO STRIKE DEFENDANT NCBE’S OPPOSITION TO MOTION TO AMEND AND FOR SANCTIONS, GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT, STRIKING PLAINTIFF’S RESPONSE TO DEFENDANT NMBBE’S REPLY IN SUPPORT OF MOTION BY NMBBE-RELATED DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AS TO SECOND CAUSE OF ACTION, DENYING PLAINTIFF’S MOTION FOR LEAVE TO FILE SURREPLY, GRANTING MOTION BY NMBBE-RELATED DEFENDANTS FOR SUMMARY JUDGMENT AS TO SECOND CAUSE OF ACTION, DENYING AS MOOT NMBBE DEFENDANTS’ MOTION TO DISMISS THIRD AMENDED COMPLAINT BASED IN PART ON QUALIFIED IMMUNITY, DENYING AS MOOT PLAINTIFF’S MOTION TO STRIKE THE MOTION TO DISMISS THIRD AMENDED COMPLAINT BASED IN PART ON QUALIFIED IMMUNITY, DENYING AS MOOT MOTION BY NMBBE-RELATED DEFENDANTS TO DISMISS WITH PREJUDICE ADA CLAIMS, DENYING AS MOOT PLAINTIFF’S MOTION FOR LEAVE TO FILE SURREPLY IN OPPOSITION TO DEFENDANTS’ REPLY IN SUPPORT OF (SECOND) MOTION TO DISMISS WITH PREJUDICE ADA CLAIMS, AND DENYING AS MOOT PLAINTIFF’S MOTION FOR LEAVE TO CONDUCT DISCOVERY LIMITED TO THE ISSUE OF JURISDICTION**

**THIS MATTER** is before the Court on United States Magistrate Judge Steven C. Yarbrough’s Proposed Findings and Recommended Disposition (“PFRD”), issued June 22, 2023. ECF No. 166. Defendant New Mexico Board of Bar Examiners (“NMBBE”) filed Objections on July 5, 2023, ECF No. 167, to which Plaintiff filed a Response on July 19, 2023, ECF No. 169.

Plaintiff filed Objections on July 6, 2023, ECF No. 168, to which Defendant National Conference of Bar Examiners (“NCBE”) filed a Response on July 26, 2023, ECF No. 172.

Pursuant to Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of the record and all parts of the Magistrate Judge’s PFRD that have been properly objected to. After conducting this de novo review and having thoroughly considered the PFRD and the objections, the Court finds no reason either in law or fact to depart from the Magistrate Judge’s recommended disposition.

It is **THEREFORE ORDERED** as follows:


1. NMBBE’s Objections, ECF No. 167, are **OVERRULED**;<sup>1</sup>
2. Plaintiff’s Objections, ECF No. 168, are **OVERRULED**;
3. Judge Yarbrough’s Proposed Findings and Recommended Disposition, ECF No. 166, is **ADOPTED**;
4. Plaintiff’s Response to Defendant NMBBE’s Reply in Support of Motion by NMBBE-Related Defendants’ Motion for Summary Judgment as to Second Cause of Action, ECF No. 121, is **STRICKEN**;
5. Plaintiff’s Motion for Leave to File Surreply, ECF No. 124, is **DENIED**;
6. The Motion by the NMBBE-Related Defendants for Summary Judgment as to Second Cause of Action, ECF No. 100, is **GRANTED**;

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<sup>1</sup> NMBBE may reraise its arguments in a motion to dismiss the Fourth Amended Complaint, or other motion. See PFRD at 58 n.29.

7. Plaintiff's Motion to Strike Defendant NCBE's Opposition to Motion to Amend and for Sanctions, ECF No. 163, is **DENIED**;
8. Plaintiff's Motion for Leave to File a Fourth Amended Complaint, ECF No. 157, is **GRANTED IN PART AND DENIED IN PART** as follows:
  - a) Plaintiff shall have **FOURTEEN DAYS** from the date of this Order to file a Fourth Amended Complaint;
  - b) The Fourth Amended Complaint shall contain **ONLY** Count III – Violation of Title III of the ADA against **ONLY** Defendant NMBBE;
  - c) The Fourth Amended Complaint **SHALL NOT** contain the following claims:
    - i. Any and all claims against Defendant National Conference of Bar Examiners;
    - ii. Count I: Violation of Title II of the Americans with Disabilities Act against Defendant NMBBE;
    - iii. Count II: Violation of Section 504 against Defendant NMBBE;
    - iv. Count IV: Violations of 42 U.S.C. § 1983 against Sophie Martin; and
    - v. Count V: Intentional Infliction of Emotional Distress against all Defendants.
9. The NMBBE-Related Defendants' Motion to Dismiss Third Amended Complaint Based in Part on Qualified Immunity, ECF No. 86, is **DENIED AS MOOT**;

10. Plaintiff's Motion to Strike the Motion to Dismiss Third Amended Complaint Based in Part on Qualified Immunity, ECF No. 95, is **DENIED AS MOOT**;
11. The Motion by NMBBE-Related Defendants to Dismiss with Prejudice ADA Claims, ECF No. 129, is **DENIED AS MOOT**;
12. Plaintiff's Motion for Leave to File Surreply in Opposition to Defendants' Reply in Support of (Second) Motion to Dismiss with Prejudice ADA Claims, ECF No. 133-1, is **DENIED AS MOOT**; and
13. Plaintiff's Motion for Leave to Conduct Discovery Limited to the Issue of Jurisdiction, ECF No. 135, is **DENIED AS MOOT**.

  
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**MARGARET STRICKLAND**  
UNITED STATES DISTRICT JUDGE